

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 202203431	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/08/2022 3:47 AM	Location of Incident: 100th Precinct stationhouse	Precinct: 100	18 Mo. SOL 11/8/2023	EO SOL 11/8/2023	
Date/Time CV Reported Fri, 05/27/2022 10:37 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/27/2022 10:37 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Kyle Ostrowski	27577	972365	100 PCT
2. SGT Alberto Jimenez	01984	935069	100 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Michael Coba	14752	955832	100 PCT
2. PO Joseph Ferrari	30978	932637	100 PCT
3. PO Marco Martinez	16717	957811	100 PCT
4. PO Kaydian Grant	04122	966081	100 PCT
5. PO Ernst Volcy	11507	944795	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Alberto Jimenez	Abuse: Sergeant Alberto Jimenez forcibly removed § 87(2)(b) to the hospital.	
B.PO Kyle Ostrowski	Force: Police Officer Kyle Ostrowski used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On May 27, 2022, § 87(2)(b) filed an online CCRB complaint.

On May 8, 2022, § 87(2)(b) was brought to the 100<sup>th</sup> Precinct stationhouse by a Lyft driver, § 87(2)(b). § 87(2)(b) informed Sgt. Alberto Jimenez that § 87(2)(b) made him feel unsafe. § 87(2)(b) exited the vehicle. Sgt. Jimenez instructed PO Kyle Ostrowski and other officers to handcuff § 87(2)(b) and to call for an ambulance (**Allegation A: Abuse of Authority**, § 87(2)(g)). As § 87(2)(b) was being escorted to the ambulance, PO Ostrowski allegedly pushed § 87(2)(b) toward the ambulance (**Allegation B: Physical Force**, § 87(2)(g)). § 87(2)(b) was transported to § 87(2)(b) and released.

§ 87(2)(g), § 87(4-b)

The investigation received BWC footage from the following officers: PO Michael Coba, PO Marco Martinez, PO Kaydian Grant, PO Ernst Volcy, and PO Ostrowski.

§ 87(2)(b) was not arrested or issued summonses during the incident.

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Sergeant Alberto Jimenez forcibly removed § 87(2)(b) to the hospital.**

BWC footage from PO Ostrowski [**Board Review 01**] captures § 87(2)(b) as she is already handcuffed. From 01:00 to 03:11, while being escorted by PO Coba, PO Grant, and PO Martinez, yells about “not being a regular Black person. You will learn that today!” § 87(2)(b) yells about her phone and about needing to make a call. She states, “I need to remember this shit!” § 87(2)(b) yells about someone hurting her. She attempts to kick PO Coba. PO Coba takes § 87(2)(b) left arm while PO Martinez holds her right arm, and they bring her to an ambulance. § 87(2)(b) jumps a short distance in the air as they near the ambulance, saying “Get the fuck offa me!” From 04:59 to 05:40, § 87(2)(b) who is strapped to a stretcher, continues to yell in the ambulance about her phone and being brought to § 87(2)(b). None of the officers inform either § 87(2)(b) or § 87(2)(b) about § 87(2)(b) behavior.

Cellphone footage (31 seconds in length) provided by § 87(2)(b) captures § 87(2)(b) outside of the vehicle. Sgt. Gonzalez, in response to § 87(2)(b) recording, informs § 87(2)(b) that § 87(2)(b) was being difficult with § 87(2)(b) that she is intoxicated and needs medical help to ensure her safety [**Board Review 15**].

§ 87(2)(b) stated that approximately two hours prior to the incident she was at a bar, where she consumed two watered down alcoholic drinks. She took a Lyft ride with § 87(2)(b) and was carrying a bottle of Corona beer, consuming about one fourth of the bottle. During the ride, § 87(2)(b) asked § 87(2)(b) whether her brother was a gangbanger or a scammer. § 87(2)(b) began speeding, prompting § 87(2)(b) to Facetime her friend (name unknown). § 87(2)(b) stated he was taking § 87(2)(b) to the stationhouse because he felt unsafe. § 87(2)(b) did not threaten him. At the 100<sup>th</sup> Precinct stationhouse, § 87(2)(b) informed Sgt. Jimenez that § 87(2)(b) made him feel unsafe and that he felt threatened because she called a friend. § 87(2)(b) exited the vehicle with the Corona bottle in hand and told Sgt. Jimenez that § 87(2)(b) was asking questions that he should not have been asking. § 87(2)(b) was upset and speaking loudly. About fifteen officers approached § 87(2)(b) who had not made any statements of harm to herself or anyone else. Sgt. Jimenez told the officers to handcuff § 87(2)(b) after she made a comment about Mexican people. Sgt. Jimenez also instructed the officers to call for an ambulance. The officers brought § 87(2)(b) to an ambulance, and she was transported to § 87(2)(b) [**Board Review 02**].

As § 87(2)(b) drove § 87(2)(b) told him that she felt scared because he was driving fast. § 87(2)(b) called her boyfriend and asked him to come outside, which made § 87(2)(b)

fear for his safety. § 87(2)(b) appeared to be intoxicated because she was mumbling. However, § 87(2)(b) did not smell any alcohol on § 87(2)(b). § 87(2)(b) did not make any statements of harm to herself or § 87(2)(b). § 87(2)(b) drove to the 100<sup>th</sup> Precinct stationhouse and informed the officers about § 87(2)(b) calling her boyfriend and that he was not leaving without a police escort. He also told them that § 87(2)(b) was drunk. The officers opened the door of the vehicle, took her by her hand, and brought her out of the vehicle. Eventually, an ambulance arrived on scene **[Board Review 14]**.

FDNY § 87(2)(b) did not have an independent recollection of the incident. He was presented with BWC footage from PO Ostrowski **[Board review 01]**. EMT § 87(2)(b) recalled officers reporting an intoxicated person. § 87(2)(b) was erratic, saying racial slurs, and she was not cooperating. EMT § 87(2)(b) did not recall smelling any alcohol. She was slurring her speech in the video. When asked about signs that § 87(2)(b) was intoxicated, EMT § 87(2)(b) stated that § 87(2)(b) was yelling, being erratic, and not answering questions. She was also very emotional, a sign of intoxication **[Board Review 03]**.

FDNY § 87(2)(b) did not recall the incident even after he was presented with BWC footage from PO Ostrowski **[Board Review 04]**.

Sgt. Jimenez was outside of the stationhouse when he heard someone calling for an officer from a vehicle parked across the street. He observed § 87(2)(b) and § 87(2)(b) verbally arguing about the fare. § 87(2)(b) was using profanity and directing racial slurs toward § 87(2)(b) who was of middle Eastern descent. § 87(2)(b) informed Sgt. Jimenez that § 87(2)(b) was aggressive, yelling, calling him names, and using racial slurs. § 87(2)(b) was afraid of § 87(2)(b) and did not want her inside his vehicle. As Sgt. Jimenez spoke to § 87(2)(b) he smelled the strong odor of alcohol in the car. § 87(2)(b) called Sgt. Jimenez a “Mexican piece of shit.” Sgt. Jimenez believed § 87(2)(b) was intoxicated. She had bloodshot watery eyes. She was not able to listen or answer questions. Sgt. Jimenez called for an ambulance and had officers escort § 87(2)(b) to the ambulance. During the escort, she was pushing back and forth, cursing and yelling. § 87(2)(b) needed to go to the hospital because she was highly intoxicated, irrational, a danger to § 87(2)(b) and possibly a danger to the officers **[Board Review 05]**.

PO Coba, PO Martinez, and PO Ostrowski provided consistent testimonies indicating that § 87(2)(b) was intoxicated and smelled of alcohol. PO Coba stated that the ambulance was called because § 87(2)(b) possibly needed a medical evaluation for being intoxicated. PO Ostrowski stated that § 87(2)(b) was escorted to the hospital because she was intoxicated, aggressive, and the officers were unsure whether she could care for herself and for her own safety. **[Board Reviews 06, 07, 08]**.

During the investigation, § 87(2)(b) was sent HIPAA forms to sign and return to the CCRB to request the medical records related to the incident. However, she failed to return the forms as requested.

NYPD Patrol Guide Procedure 221-13 defines an emotionally disturbed person as someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which an officer reasonably believes is likely to result in serious injury to himself or others and they must be taken into protective custody and taken to the hospital **[Board Review 09]**.

Although the testimonies and video footage showed that § 87(2)(b) raised her voice and cursed at the officers, the investigation determined that neither those factors, nor any additional factors articulated by Sgt. Jimenez, supported a belief that § 87(2)(b) posed an imminent risk of harm to herself or others. The factors articulated by Sgt. Jimenez – that § 87(2)(b) was intoxicated and boisterous – are not inherently indicative of some mental illness or temporary derangement warranting a forcible removal to the hospital. Sgt. Jimenez alleged that § 87(2)(b) behavior posed a threat to the safety of § 87(2)(b) and the officers. However, § 87(2)(b) testified that § 87(2)(b) did not threaten him during their interaction, and he decided to transport her to the stationhouse because he was afraid of encountering § 87(2)(b) boyfriend at

her destination. Once outside of § 87(2)(b) vehicle, she was outnumbered by officers who promptly placed her in handcuffs eliminating any potential threat to the officers' safety.

§ 87(2)(g)

**Allegation (B) Force: Police Officer Kyle Ostrowski used physical force against § 87(2)(b)**

BWC footage from PO Ostrowski [Board Review 01] depicts § 87(2)(b) being escorted to an ambulance by PO Grant, PO Coba, and PO Martinez. From 00:05 to 02:31, PO Ostrowski follows the officers and § 87(2)(b) from behind. § 87(2)(b) kicks at PO Coba, who takes hold of § 87(2)(b) left arm. From 02:31 02:56, PO Coba and PO Martinez walk § 87(2)(b) to the ambulance. At no point in the footage does PO Ostrowski, or any officer, push § 87(2)(b).

§ 87(2)(b) stated that PO Ostrowski pushed her across the street and toward the ambulance, forcing § 87(2)(b) who was trying to remain in place, to walk. When PO Ostrowski began pushing her with more force, § 87(2)(b) kicked her leg backward to strike PO Ostrowski's lower leg area. PO Ostrowski began pushing § 87(2)(b) again to force her across the street [Board Review 02].

§ 87(2)(b) stated that no officer pushed § 87(2)(b) [Board Review 14].

PO Ostrowski testified that he held § 87(2)(b) bagged belongings as other officers escorted § 87(2)(b) to the ambulance. § 87(2)(b) turned around and kicked PO Coba. PO Ostrowski denied pushing § 87(2)(b) [Board Review 08].

BWC footage from PO Ostrowski does not depict PO Ostrowski pushing § 87(2)(b). Other than PO Coba taking § 87(2)(b) left arm after she kicks him and guiding her to the ambulance alongside PO Martinez, no officer in BWC footage pushed § 87(2)(b).

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)
- Sgt. Jimenez has been a member-of-service for 18 years and has been as subject in four cases and nine allegations, none of which have been substantiated.
- PO Ostrowski has been a member-of-service for one year, and this is the first CCRB complaint to which he has been a subject.

**Mediation, Civil, and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of August 12, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident [Board Review 12].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 11

Investigator:	Signature	Inv. Mike Talisayan Print Title & Name	07/05/23 Date
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Squad Leader:	Edwin Pena Signature	IM Edwin Pena Print Title & Name	07/05/2023 Date
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Reviewer:	Signature	Print Title & Name	Date
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